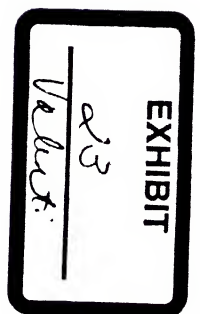


WIPO ONE YEAR LATER:
ASSESSING CONSUMER ACCESS
to DIGITAL ENTERTAINMENT
on the INTERNET and
OTHER MEDIA

presented to the
Subcommittee on Telecommunications, Trade,
and Consumer Protection
Committee on Commerce
U.S. House of Representatives

by
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I appreciate this opportunity to present the Motion Picture Association of America's views on assessing consumer access to digital entertainment and the threat of Internet piracy. This is an opportune time to assess the vast possibilities, and the dangers, of digital delivery of motion pictures and other audio-visual works on the one-year anniversary of the enactment of the Digital Millenium Copyright Act (the DMCA).

I. THE OPPORTUNITY AND THE THREAT

Motion pictures are about entertainment, romance, adventure, excitement, drama, comedy, and mystery – intangibles that no one can put a value on except the people who watch films and the people who create them. Motion pictures are also intellectual property. The Internet and other electronic commerce media create tremendous opportunities for MPAA member companies' to market their intellectual property. The Internet also provides vast new viewing opportunities for consumers.

Motion pictures are affordably priced so that everyone can see a picture. Affordable pricing is possible because of the multiple markets in which the producers can amortize the cost of production, including theaters, DVDs, home video, pay TV, free TV, etc. -- and now, the Internet. If these markets are destroyed because films are placed illegally on the Internet or transmitted electronically without adequate protection, the result will be an increase in price, a degradation in production values and a reduction in viewing options for consumers.

When piracy flourishes, commerce shrivels. Over the years, MPAA and its members have, to our chagrin, become intimately familiar with trends and developments in the field of copyright piracy. Today, piracy of audio-visual products – movies, videos, television programs – is a \$2 billion a year worldwide problem, and growing. We at MPAA are fighting it with hundreds of investigators, technicians and lawyers, at a cost of millions of dollars, in almost 80 countries around the world. In addition, our companies individually invest millions of dollars to counter this threat.

amount of bytes needed for a full-length motion picture and the lack of unprotected digital copies of our works. A full-length motion picture includes more zeroes and ones than almost any other type of digital product – more than a song or most software. In addition, there are not billions of copies of audiovisual works in digital forms that are not protected by technological measures, such as the DVD CSS scheme.

With the increased availability of broadband Internet access allowing for faster downloads and the companion development of higher and better levels of compression, the motion picture industry is rapidly approaching the Internet piracy problem already faced by the software, video game and music industries. Likewise, with the advent of digital recording devices and high-definition televisions, some of our member companies' works are at risk of being digitally reproduced without their permission in commercially valuable forms. Our ramparts are being breached on all sides.

Downloadable media piracy has the following unique characteristics that threaten the foundations of the motion picture industry:

1. A single pirate with a single copy of a film can allow thousands of copies to be downloaded in a matter of hours. These copies can be "mirrored" at sites all over the world, making even more copies possible. Thus, with a single keystroke, a pirate can do millions of dollars worth of damage to the potential market for a motion picture, whether or not the pirate makes a nickel from this effort.
2. The equipment required to be an Internet pirate is widely available and costs far less than for other forms of piracy. It is also highly portable, making piracy more difficult to detect. Pirates do not need to remain in a fixed location but can upload illegal materials anywhere in the world on any computer that is linked to a network.
3. Consumers may obtain pirate products in the privacy of their own homes, rather than in the public marketplace, making it easier for the product to get to the consumer and making detection of transactions even more difficult. Moreover, this decreases the social stigma of obtaining illegal materials on the street or in flea markets.

III. CONGRESS RESPONDS – PASSAGE OF THE DMCA AND MPAA ENFORCEMENT ACTIVITIES

In response to the threat of Internet piracy, Congress began to act more than three years ago. In 1997, Congress passed the No Electronic Theft (NET) Act. Passage of the NET Act was an important milestone, and just this past August the Justice Department began the first successful criminal prosecution under the NET Act.

However, Congress understood that the NET Act was only one step in combating Internet piracy. On October 28, 1999, the President signed the DMCA. Enactment of the DMCA provided three significant advancements in combating illegal piracy. First, the DMCA insures “adequate legal protection and effective legal remedies against the circumvention of effective technological measures” that are used by copyright holders in the exercise of their rights, as required by the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (the Treaties). Second, the DMCA provides protection to copyright management information embedded in copyrighted materials, both electronically and physically. Third, as part of the DMCA, Congress created a simplified notice and takedown procedure for online service providers (OSPs) that are hosting websites with infringing materials. Following these procedures provides OSPs a safe harbor from copyright liability.

Because the DMCA is still very new, MPAA has limited experiences in DMCA enforcement. Since DMCA enactment, MPAA has filed a number of expedited subpoenas with Internet Service Providers (ISPs), to obtain information about individuals that have posted illegal audiovisual works on their websites.

MPAA has also worked closely with other portions of the copyright community to insure continued access to the domain name WHOIS database. Access to this database is essential in combating Internet piracy. The DMCA will not work as Congress intended unless access to WHOIS is maintained. MPAA’s piracy investigators must determine which website is responsible for the illegal material. The WHOIS database is the first step in determining the ultimate Internet pirate. I want to thank the members of this Subcommittee, and the members of the full Committee, for protecting free unfettered access to the WHOIS database.

IV. DEVELOPING TECHNOLOGICAL PROTECTIONS

Finally, MPAA and its member companies have been working with the high-tech and consumer electronics industries to develop workable standards for the distribution of high value content over DVD, HDTV as eventually the Internet. Technology is currently in place that permits content owners to prevent the unauthorized copying of DVD material. This has made possible a thriving new market for movies, and consumer electronics devices, and has given consumers a new, improved viewing option. Intense discussions are currently taking place on technology to provide secure digital outlets for the safe transmission of digital content within digital devices, and between devices. Much of this discussion involves licensing terms, the details of which I do not know and in any case would be inappropriate for me to air them in this forum.

I can tell you in general that content owners, and consumer electronics companies and computer companies, are working very hard to create a digital environment that offers the security necessary to attract high value content. For my part, I take no position on what content should or should not be prevented from copying, or from redistribution on the Internet. That is a decision that will be made by individual content owners, their distributors, and, most of all, by consumers. What we are trying to create is an environment where content owners have the technological option to prevent copying and redistribution of high value content, and consumers have the option of viewing high value content in the widest possible variety of times, places and formats.

V. CONCLUSION

In conclusion, the promise of the DMCA is just beginning to be fulfilled. MPAA stands committed to working with Congress and all law enforcement agencies to implement the DMCA in a fair and just manner. MPAA and its member companies are committed to making electronic commerce work, while still protecting their investments in creating entertainment valued worldwide. Inadequacies in the protection of intellectual property in the networked environment will stifle the full potential of electronic commerce. A plague of piracy — theft of intellectual property — threatens to blight this new marketplace.

Thank you for providing me this opportunity to share these thoughts with the Subcommittee today.